HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP no. 1523/05 (S/S)

WP No. 1537/04 (S/S)

Jitender Kumar & others

vs

State through Secretary Edu. Dehradoon

Approved for reporting

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~~Not approved for reporting~~

Date of decision 27.03.06

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1537 OF 2004 (S/S)

1. Jitendra Kumar s/o Mr. Ram Swaroop
   Village Devipura, Block Jaspur,
   District Udham Singh Nagar
2. Swardesh Kumar s/o Mr. Naresh Singh
   Village Devipura, Block Jaspur,
   District Udham Singh Nagar.

.....Petitioners

VERSUS

1- State of Uttaranchal through Secretary, Education, Dehradun.

3- Joint Director of Education, Nainital.

4- Joint Director of Education, Pauri.

.....Respondents

Writ Petition No. 1523 OF 2005 (S/S)

1. Adesh Chauhan d/o Sri Wed Pirkash Chauhan
R/o Devipura, Block, Jaspur
District Udham Singh Nagar

2. Renu Chauhan d/o Sri Wed Pirkash
R/o Devipura, Block Jaspur,
District Udham Singh Nagar .....Petitioners

VERSUS

1- State of Uttaranchal through Secretary, Education, Dehradun.

3- Joint Director of Education, Kumaon Division, Nainital.

.....Respondents

Dated: 27.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Rakesh Thapliyal and Sri Khalil Ahmad counsel for the petitioners and Standing Counsel for the respondents.

By the present writ petitions the petitions have prayed for a writ of mandamus commanding the respondents to recognize the certificate of Intermediate Grade Drawing Examination as qualification for appointment of Assistant Teacher Art in L.T. Grade.

The petitioners have submitted that on 20-10-2004 and on 6-11-2004 the respondent No.3 & 4 published an advertisement for the post of Asstt. Teacher, Arts in L.T., Grade, the petitioners are Intermediate with Technical drawing as one of the subject, Graduate and some of them are Post Graduate and in addition to this the petitioners also have Intermediate Grade Drawing Examination Certificate, a certificate issued by Directorate of Arts, Govt. of Maharashtra. The petitioners have submitted theirs applications in pursuance of advertisements dated 20-10-2004 and 6-11-2004 issued by Respondent No.3 & 4 respectively. But the respondent No. 3&4 did not considered the candidature of the petitioners only on the ground that the petitioners does not eligible for the post as I.G.D.E. Certificate is not recognized.

The Certificate of I.G.D.E. Certificate is recognized by the Intermediate Education Act, 1921. The qualifications prescribed for Asstt. Teacher, L.T. Grade under the Act of 1921 is quoted below:-

i- Arts Master Training Certificate formerly known as Drawing Teacher Certificate of Govt. School of Arts and Crafts, Lucknow. OR

ii- Intermediate Passed with Technical Art from Board of Intermediate Education OR

iii- High School Examination passed with Technical Arts and any of the following qualification.

a- B.A. with Drawing and painting OR

b- Fine Arts Diploma of Kala Bhawan, Shanti Niketan

OR

c- Certificate of Govt. Drawing and Handicrafts Centre, Allahabad. OR

d- Final Drawing Teacher ship Examination Kalkatta.

OR

e- Teachers Senior Certificate Examination, Mayor School of Arts, Lahore OR

f- Intermediate Grade Examination of Bombay OR

g- Third Grade Arts School Examination, Bombay

In the year 1983 the U.P. subordinate Educational trained Graduate Grade service Rules, 1983 were framed in these Rules qualification for Assistant Teacher, L.T. Grade, Arts is mentioned as under:

Assistant Master/ Assistant Mistress (Arts)- 1 - *Intermediate examination of the board of High School and Intermediate Education Uttar Pradesh and any equivalent examination with Arts, Masters Training Certificate (formerly known as drawing teacher certificate of Govt. School of Arts of crafts, Lucknow) or a certificate recognized as equivalent there to.*

2- *Bachelor of Arts Degree from a recognized university or degree recognized as equivalent thereto with a certificate awarded by the Govt. Drawing and Hindi Graft Center, Allahabad (Since abolished) or a certificate recognized as equivalent thereto.*

OR

3- Intermediate with a technical drawing with one of the following examination.

(a) Fine Arts diploma of the Govt. School of Arts and Crafts, Lucknow.

OR

(b) Bachelors degree in Arts with drawing and paining from a recognized university or a degree recognized by the Govt. thereto.

(c) Fine Arts diploma of Kala Bhawan, Shanti Niketan.

OR

(d) Final Drawing teacher ship examination Calcutta.

OR

(e) Teacher Senior Certificate Examination, Mayor School of Arts Lahore.

The petitioners are eligible for the post of Assistant Teacher, Arts in L.T. Grade under qualifications clause 1 & 2 of the Rules of 1983 as the petitioners are Intermediate and Graduate and having I.G.D.E., Certificate, which is recognized by the Act of 1921 and till 1992 the I.G.D.E. Certificate was recognized in the C.T. Grade for Govt. Institutions. The petitioners have submitted that in the year 1998 four persons having I.G.D.E.

Counter Affidavit filed by the respondents and it has been stated that the Act of 1921 is applicable for appointment of Assistant Teacher for recognized Institutions and not for the Govt. Institutions and in the year 1998 the appointment were made as per the Rules of 1983 and the Certificate of I.G.D.E, Bombay was not considered at all for appointment of those four persons, these four persons have Graduate Degree in Arts as one of the subject, and the I.G.D.E. Bombay is not recognized by the Govt. hence the petitioners are not qualified for the post as per the Rules of 1983.

The counsel for the petitioners have submitted that under the Rules of 1983, a person having Graduate Degree in Arts subject is eligible for appointment as Assistant Teacher (Arts) in L.T. Grade, he should have Fine Arts Diploma of Kala Bhawan, Shanti Niketan in addition to Graduate in Arts. But

these four persons appointed in the year 1998 does not have Diploma of Shanti Niketan which shows that in the year 1998 I.G.D.E. Certificate was considered and there is not a single whisper in the Rules of 1983 that these Rules are applicable only for the Govt. Institutions, further the respondents have made the appointment in the year 2002 and 2004 of the candidates who have only Graduate in Arts, but according to Rules of 1983 Graduate in Arts must be followed by the Diploma of Shanti Niketan. These appointment made in the year 1998 were illegal and against the Rule of 1989 if I.G.D.E. Bombay Certificate was not considered.

The entire Education system in the State has been controlled and regulated by authorities i.e. the Secretary and Director and the Pay Scale of Employees appointed under the Act of 1921 and Under the rules of 1983 are equal and same, therefore, there can not be two separate sets of qualifications for appointment of Assistant Teacher, L.T. Grade and as the I.G.D.E., Certificate is recognized under the Act of 1921 and till 1992 this certificate was recognized for appointment for Asstt. Teacher, C.T. Grade and in 1992 the C.T. Grade was declared dying cadre but no orders whatsoever is passed by the Govt. to de-recognized the Certificate of I.G.D.E., Bombay as such the I.G.D.E., Bombay, certificate have recognition by the Govt, and the certificate of I.G.D.E., Bombay is a recognized certificate for the appointment for the post of Asstt. Teacher, Arts in L.T. Grade as required by the Rules of 1983 in qualification clause 1 & 2.

On 14-9-2005 Learned Advocate General was called by this Court to assist the Court and directed the Learned Advocate General to get clarification of the Rules of 1983 from the Government but no clarification has been given by the Learned Advocate General till date.

In view of above, the respondents are directed to consider the candidature of the petitioners for appointment as Assistant Teachers L.T. Grade against the vacant posts in the State within two months after obtaining certified copy of this order.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: 27.3.2006 **Rajesh Tandon, J.**

***** Dhyani